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Kaye John Bragg

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FEDERAL COMMUNICATIONS COMMISSION

In re Applications of:)	WT Docket No. 97-199
)	
WESTEL SAMOA, INC.)	File No. 00560-CW-L-96
)	
For Broadcast Block C)	
Personal Communication)	
Systems Facilities)	
)	
and)	
)	
WESTEL, L.P.)	File Nos. 00129-CW-L-97
)	00862-CW-L-97
For Personal Broadband Block F)	00863-CW-L-97
Personal Communications)	00864-CW-L-97
Systems Facilities)	00865-CW-L-97
)	00866-CW-L-97

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Before the
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Washington, D.C. 20554

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Courtroom 1
FCC Building
2000 L Street
Washington, D.C.

Wednesday,
August 26, 1998

The parties met, pursuant to the notice of the
Judge, at 2:36 p.m.

BEFORE: HON. ARTHUR I. STEINBERG
Administrative Law Judge

APPEARANCES:

On behalf of Anthony T. Easton:

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1 P R O C E E D I N G S

2 THE COURT: We're on the record. This is a
3 further pre-hearing conference in WT Docket No. 97-199.
4 Just for the record, I postponed the hearing last Friday on
5 the basis of the unanimous request by the parties to do so,
6 to enable them to discuss settlement. At their suggestion,
7 I scheduled this hearing, settlement status conference, for
8 now and that's why we're here.

9 Does anybody want to say anything? Who wants to
10 start? Let me start with the Bureau.

11 MS. LANCASTER: Our understanding at this point,
12 Your Honor, we do not have an agreement. We have made
13 offers of what was acceptable to the Bureau to both Mr.
14 Easton's counsel and Mr. Breen's counsel. Have not heard
15 back from Mr. Easton's counsel at this point and was told no
16 by Mr. Breen's counsel and have heard nothing else from
17 them.

18 THE COURT: Mr. Gordin?

19 MR. GORDIN: Your Honor, I think, unfortunately,
20 the bottom line, as Ms. Lancaster indicated, is the fact
21 that as we reviewed it on Friday, among the private parties,
22 that we were in agreement. As indicated, part of all of
23 this is obviously going to involve discussions directly
24 between the Bureau and the private parties. Ms. Lancaster
25 is reporting on that.

1 In terms of our discussions, a few minutes
2 before -- without getting into the substance of the
3 discussions, a few minutes before we came, we had a lengthy
4 fax from one of the parties with several conditions that we
5 had never seen before. And, I can't feel optimistic about a
6 settlement at this point. That's the --

7 MR. LUKAS: Your Honor, on behalf of Mr. Easton,
8 Mr. Easton and Mr. Breen, I believe, have reached an
9 agreement. We think we're very close --

10 THE COURT: Mr. Easton and Mr. Breen have reached
11 an agreement?

12 MR. LUKAS: Right.

13 THE COURT: Well, that's good, because you're both
14 on the same side. I mean, that's nice if you're able to do
15 it. I'm being very sarcastic here.

16 MR. LUKAS: Okay. We believe we're very, very
17 close to reaching an agreement with ClearComm. We've seen
18 two drafts of a settlement agreement. We didn't see
19 anything material there. I think we could draft that up
20 fairly quickly.

21 Unfortunately, we ran out of time with respect to
22 our negotiations with the Bureau. We got as close as the --
23 this morning and we just didn't have enough time to get
24 their comments and get a proposal together. I think we can
25 do that very shortly, but unfortunately, as far as I know,

1 we don't have an agreement, as Ms. Lancaster said.

2 THE COURT: Mr. Carroccio?

3 MR. CARROCCIO: Your Honor, I would say that since
4 Mr. Gordin has characterized our recent fax to ClearComm --

5 THE COURT: Well, he didn't say who it was from.

6 MR. CARROCCIO: Well, it is from us and we'll
7 acknowledge that, Your Honor. We aren't as close as we
8 thought we were with the private parties, and while agree
9 that there is an agreement between Mr. Breen and Mr. Easton
10 as to how to facilitate an agreement between Romulus and
11 ClearComm, we certainly are not anywhere near approaching
12 settlement or terms of settlement with the Bureau.

13 We represented with a requirement for settlement
14 yesterday afternoon that we have rejected --

15 THE COURT: Is it a requirement or a proposal?
16 It's a big difference.

17 MR. CARROCCIO: It was cumulatively, as I believe,
18 it was a requirement. It is not acceptable and we will not
19 proceed to even discuss settlement with the Bureau any
20 longer, as long as that requirement is on the table. So,
21 I'm not optimistic about settlement.

22 THE COURT: Does anybody object to me horning on
23 this? If you do, I'll just say, okay, I'll see you Monday,
24 if anybody objects. If you don't object, then I'll give you
25 the benefit of whatever limited wisdom I may have. Any

1 objection?

2 MR. CARROCCIO: Your Honor, I've always been of
3 the opinion that a bad peace is better than a good war, but
4 I think I've finally encountered the exception that proves
5 the rule.

6 THE COURT: A bad peace is better than a good war?
7 Well, I would take the peace anytime, over the war.

8 MR. CARROCCIO: Under most circumstances, I would
9 agree.

10 MR. LYON: Unfortunately, that didn't work at the
11 end of World War I, but --

12 THE COURT: Okay, I don't want to do this on the
13 record, because I don't think it belongs on the record. If
14 anyone wants it to be on the record, we'll have it on the
15 record.

16 MS. LANCASTER: I agree with you, Your Honor, that
17 it should not be.

18 THE COURT: You know --

19 MR. CARROCCIO: No objection, Your Honor.

20 ALL: No objection.

21 MR. CARROCCIO: Your Honor, we have no objection
22 to going off the record at this time. At such time as we
23 think it's appropriate to go back on the record, we reserve
24 the right to request to do so.

25 THE COURT: Fine. Just, while we're on the

1 record, anything that's said, everyone recognizes that
2 anything that's said for settlement purposes and for the
3 purposes of reaching an agreement is not useable in the
4 hearing. Everybody understand that?

5 MS. POWER: Yes, Your Honor.

6 MR. GORDIN: Yes, Your Honor.

7 MR. LYON: Yes, Your Honor.

8 MR. CARROCCIO: Your Honor, we would view your
9 role as that of a mediator and everything is off the record.

10 THE COURT: Okay, let's go off the record.

11 (Whereupon, a short recess was taken.)

12 THE COURT: Okay, we're back on the record. We've
13 been basically talking settlement for a couple of hours and
14 we've made a little bit of progress but not a whole lot. I
15 made the decision that we go to hearing on Monday morning as
16 scheduled. If the case settles, it settles, and if it
17 doesn't, unfortunately, it doesn't. But, I would just urge
18 everybody to just try to settle it, for the reasons that I
19 stated off the record and don't want to put on the record.
20 It would be more beneficial for everybody if we did that.

21 Mr. Lyon said that there were a couple of things
22 that he wanted to discuss on the record, and I mentioned
23 also off the record that Mr. Lyon, I think it was last
24 Friday, sent over a request for a subpoena and I had not
25 signed it. I had not granted the request and signed the

1 subpoena.

2 What I was planning on doing, I had copies made
3 for everybody and I was going to hand it out Monday morning
4 for everybody to read and consider and then we would
5 basically all argue it at the appropriate time and I would
6 make a ruling. And, the appropriate time would be a couple
7 of days into the hearing, I guess.

8 That ought to keep you in suspense. If you want,
9 I can hand it out now or after this -- I'll hand it out
10 after we conclude today and that way, you can be thinking
11 about it. I don't need any written responses. I just want
12 oral responses at the appropriate time to the request,
13 because I want to position the parties on it before I issue
14 a ruling.

15 Okay, Mr. Lyon?

16 MR. LUKAS: Your Honor, actually, I was going to
17 address one point.

18 THE COURT: Okay.

19 MR. LUKAS: Your Honor, you have issued three
20 scheduling orders in this case, going back to October, 1997,
21 before ClearComm and Mr. Easton were parties. The problem
22 with each order was the direction that the parties exchange
23 direct cases, that there was going to be oral testimony, an
24 outline of the expected testimony would be supplied.

25 At your July 7 pre-hearing conference, you made it

1 clear that the major points they expect each of their
2 witnesses to make would be exchanged. What was exchanged?
3 I'm just going to object for Mr. Easton, because he has to
4 testify on Monday, presumably. What we got was 11 topics
5 that they expected to question about, no points, whatsoever.
6 They may have 11 more, but they may want to talk about
7 examining against very general -- and they even say they may
8 want to talk about all matters calculated to admissible
9 evidence under these designated issues. I find no point in
10 there that I could help prepare Mr. Easton for.

11 I could go on with the rest of them, but all the
12 witnesses, but not a single one was put into written form.
13 Each one of your orders recommended that many of these
14 witnesses, if possible, would be presented -- testimony. I
15 don't think they complied and I'll ask Your Honor at least
16 to have them give us an outline of what they expect Mr.
17 Easton to testify to prior to Monday.

18 THE COURT: He wants to address that first. Mr.
19 Carroccio, you agree, right?

20 MR. CARROCCIO: Your Honor, I would go a little
21 bit further, quite frankly. I'm not quite as prepared as my
22 brother.

23 Mr. Lukas made a point that I think has to be
24 addressed. In, I think it's 14 out of 21 witnesses listed
25 among the topics is a statement that essentially indicates

1 they will be examined under the discovery standard.

2 THE COURT: I read that and I said, this is,
3 somebody screwed up. It's a typo to this. They didn't mean
4 that.

5 MR. CARROCCIO: Your Honor, I presume you're
6 saying that you're saying that you're not going to allow
7 discovery to be taken in your courtroom?

8 THE COURT: Yes, sir, and I think everybody knows
9 that we had discovery.

10 MR. CARROCCIO: Okay.

11 THE COURT: But, that's not going to stop anybody
12 from asking whatever questions they want to ask.

13 MR. CARROCCIO: Your Honor, the other thing I
14 would point out and I think there are approximately 100
15 exhibits that were proffered and Your Honor was very
16 specific at one point in the pre-hearing conferences, that
17 you wanted to know who the principal sponsor of each exhibit
18 was.

19 THE COURT: I didn't say principal. I said
20 sponsor. If there are five people listed and I used an
21 example with Ms. Lancaster -- I said, if you list A, B and C
22 and you can get half the exhibit in through A and the other
23 half through B, then you don't have to use C as the sponsor.
24 If you can get the whole thing through A and not B -- isn't
25 that in the record somewhere?

1 MS. LANCASTER: Yes, sir, because I asked you
2 specifically, if we were talking about, did we have to call
3 every witness and you said, well, if they're sponsoring an
4 exhibit, you have to, you know, call them to get the exhibit
5 in or you don't get the exhibit in. I said, but if we've
6 got several witnesses who could possibly sponsor a
7 particular exhibit and we get the exhibit in through one of
8 those witnesses and we decide we don't want to call the
9 other one, do we have to? And, you said, no, we didn't have
10 to.

11 THE COURT: So, they're just covering themselves.

12 MR. CARROCCIO: Well, okay, Your Honor, I,
13 unfortunately, do not have any of the transcripts with me or
14 anything.

15 THE COURT: Neither do I.

16 MR. LUKAS: I do. And, Your Honor, you did use
17 the word as a term, primary sponsor. Page 78 of the
18 transcript of --

19 THE COURT: Okay, read the whole sentence.

20 MR. LUKAS: "I also want of you, too, on that
21 date, to provide a list identifying a sponsor of each
22 exhibit, so that there's no question as to who is going to
23 be sponsoring what exhibit, you know, the primary sponsor."

24 MR. GORDIN: Your Honor, may I?

25 THE COURT: Mr. Carroccio, are you finished,

1 because I interrupted you?

2 MR. CARROCCIO: Your Honor, I think there's
3 something more, something about also, if there was going to
4 be more than one witness, you wanted to know, I think you
5 asked, specifically directed, that the witness, the
6 sponsoring witness -- if there were more than one sponsoring
7 witness, that they be identified with the particular portion
8 of the exhibit. I believe so, Your Honor.

9 THE COURT: I think what I did was I used the
10 example of A and B and C. I mean, my memory -- I haven't
11 read that over --

12 MR. LYON: Your Honor, if I could make the second
13 point also, it's a consolidated point -- the other point
14 that I thought that you wanted was counsel to meet and to
15 discuss the general times that witness were going to appear,
16 so that we would have an indication approximately of when
17 witnesses were going to appear and be able to prepare.

18 We had a meeting by telephone on the 18th of
19 August. Mr. Carroccio and I asked for the approximate dates
20 when witnesses were expected to testify and were essentially
21 told that that couldn't be -- that counsel didn't know.

22 THE COURT: Okay, I think, if my memory serves me,
23 that I originally said that, and then I said no, it will be
24 sufficient if you just let everyone know a couple of days
25 ahead of time, because we don't know how the hearing is

1 going to go. We don't know what the timing is going to be,
2 so that if you let everyone know a couple of days ahead of
3 time, and we could do this off the record during the hearing
4 session -- I don't know if I said that part of it -- but
5 that we could do it a couple of days at a time, because we
6 don't know how long people are going to take and it doesn't
7 make any sense to me to put 12 people in a witness room and
8 have them sitting there for two weeks.

9 MR. LYON: I hear you, Your Honor.

10 THE COURT: I mean, I think that's what I was.

11 MR. LYON: That could be provided --

12 THE COURT: Well, I don't think they can.

13 MR. GORDIN: Your Honor, may I respond, please?

14 THE COURT: Yes, sir.

15 MR. GORDIN: First of all, as to the pre-hearing
16 submission, part of what Your Honor said and we had
17 discussions here, we had discussions off the record here, we
18 had discussions off the record on the phone during various
19 phone calls about this.

20 My recollection is that in discussing Mr. Easton
21 in particular, and I would suggest that there are other
22 witnesses who would be very closely related to Mr. Easton,
23 but Your Honor was very clear that it was going to be cross-
24 examination and Mr. Lyon at that point asked whether we
25 would get details on cross-examination and Your Honor said

1 we didn't have to.

2 One of the things that we've done in here that I
3 hear complaints about is that with regard to documents,
4 we've tried to be extensive about the witnesses to give them
5 some idea as to what we will be asking the witnesses about.
6 I think more so than we really needed to do, particularly
7 since there are several adverse witnesses in there.

8 Most all of them have been subject to extensive
9 examination in this case. There are no surprises here nor
10 is it our perception or belief, one of the witnesses, Sue
11 McNeil, is an FCC employee, all the others, at least, were
12 available. One or two of the witnesses may be FCC
13 employees. I think there is a fair amount of detail. As to
14 the categories, as Your Honor knows, many times you get just
15 a one-sentence description of what the witness will be
16 testifying about.

17 Chain of custody, not only are there numerous --
18 because I recall what Your Honor said about being inclusive.
19 We have problems stipulating on chain of custody issues. We
20 had a two hour conversation on the 18th on what some of
21 these computer records that may be -- there may be a number
22 of witnesses to tie these things together.

23 As to the timing of witnesses, in the conference,
24 of course, I think this is highly unfair, at least how Mr.
25 Lyon now mentioned. I would just point out that during the

1 conference call, we had a discussion that started out with
2 how long we would take with Mr. Easton. Clearly, an
3 important witness, the first witness. Everyone made
4 comments. When you got to Mr. Lyon, he said he didn't know
5 if he was going to examine Mr. Easton.

6 Well, I would say to that, now you throw off the
7 schedule for all the other witnesses.

8 THE COURT: Well, let's not argue about that. I
9 understand we don't know -- never mind. I'll let you
10 finish.

11 MR. GORDIN: I believe that, given the fact that
12 there's litigation, given the fact that there's going to be
13 extensive deposition testimony from most of these witnesses,
14 given the fact that we tried to identify many of the
15 documents with all of these witnesses, when, in fact, many
16 of the witnesses are adverse, I don't think anyone is going
17 to be surprised. As I say, I think there are three
18 witnesses, maybe, who weren't deposed on that list, all of
19 whom have been mentioned. One is actually, I think, as it
20 turns out, a rebuttal witness, from my understanding of the
21 information.

22 One of them could have been deposed and wasn't and
23 the other is Ms. McNeil, whom I think everyone at least
24 knows the subject.

25 MS. POWER: She's not an employee. She could have

1 been deposed.

2 MR. GORDIN: I take that back.

3 THE COURT: If she was an employee at the time
4 that the events occurred, she'd need Commission permission
5 and nobody asked me and I don't know that I would have given
6 it.

7 MR. LUKAS: Your Honor, can I address that?

8 THE COURT: Ms. Power has to speak. Well, you can
9 if you want to.

10 MS. LANCASTER: Your Honor, I would like to say
11 something. As you well know, neither Ms. Power or I had
12 ever done a direct case and Mr. Gordin has not done a direct
13 case. We think that we have complied clearly with your
14 instructions and we ran it by people in our office who had
15 done direct cases and they seem to think that we complied
16 with the general format that's usually followed.

17 We included, and we tried to explain this during
18 our teleconference on the 18th. We tried to explain to Mr.
19 Lyon that we overincluded things for witnesses, in that, say
20 we have a computer witness, just as an example. It may be
21 that we want to ask each witness about every single thing,
22 every single subject that we listed, but it may be that
23 that's not necessary, depending on the testimony that's come
24 before. We don't want to spend a whole lot of time being
25 repetitious.

1 On the other hand, if we had not included it and
2 then we needed to cover that point, you don't think they
3 would be in here today, making the argument or be at trial,
4 making the argument that oh, that wasn't included as a
5 subject of their direct case? So, I see this as we can't
6 really win with Mr. Lyon and Mr. Carroccio on this subject.
7 We've tried to cover everything that we thought that we
8 would be asking any questions about.

9 No, we did not set out every single question we
10 planned to ask on a topic, but we put the topics down in
11 order to give them sufficient notice to cover those
12 particular topics. As Mr. Gordin has already stated, there
13 are no real surprises here. Everybody sat through the
14 depositions. We all know the subject matter that was
15 addressed in the depositions and the questions that were
16 answered. I just get a little frustrated with this
17 argument, because I know they'd be making the opposite
18 argument if we'd not put something in.

19 THE COURT: I don't need a response. Whatever
20 request you're making is denied. I think that the letter
21 gives you more than ample notice as to the subject matters
22 of the proposed testimony of the witnesses.

23 I didn't have to do it. I didn't have to include
24 language like I did in my order. I did it as a favor to you
25 because, if I was sitting in your chair, I'd want to know

1 the subject matters of the examination and I think you do.
2 I think the letter gives you more than ample notice, and I
3 looked at the last clause of the things, you know, the
4 terms, the discovery standard. I just looked at that as
5 somebody messed up and included the wrong standard. They
6 probably meant to say any other relevant material matters
7 that we happened to think of at the time, you know, being
8 facetious about it.

9 Okay, next point?;

10 MR. CARROCCIO: Your Honor, I'll maybe take the
11 next point. I believe that Your Honor issued a ruling and
12 again, without reference materials at this point, that no
13 fact witness was supposed to be present at any deposition of
14 any other witness.

15 THE COURT: Except the computer experts and the
16 principals.

17 MR. CARROCCIO: Excepting the computer experts and
18 the principals. Your Honor, there is a witness, a Bureau
19 witness, noted in the direct case of John --

20 MS. LANCASTER: He's a computer expert.

21 MR. CARROCCIO: You've never submitted him as an
22 expert.

23 MS. LANCASTER: He's a computer person who sat in
24 to try to decipher the computer testimony.

25 THE COURT: Well, I'll tell you what, when his

1 testimony is offered, you can bring the matter up and you
2 can argue it then and you can argue that he somehow was
3 tainted, his opinion, or whatever, was tainted by whatever
4 he heard in the depositions of what, Mr. Brauss and Mr.
5 Franklin?

6 MR. CARROCCIO: Yes, Your Honor, I don't have a
7 dog in that fight, so --

8 THE COURT: So, why don't you just stick with the
9 dogs you do have? You've got enough dogs without worrying
10 about other people's dogs.

11 MR. GORDIN: Your Honor, in that regard, I would
12 just say that Mr. Lamoso is President of ClearComm and he's
13 also --

14 THE COURT: Okay, which one is Mr. Lamoso?

15 MR. GORDIN: I'm sorry, Mr. Lamoso and the other
16 person here is Mr. Daniel Parks.

17 MR. LYON: Your Honor, it is my understanding that
18 Mr. Lamoso and Mr. Parks are not covered by the exclusion.

19 THE COURT: Right, well, Mr. Breen clearly isn't
20 covered. Well, anyway, what's the next point? Any other
21 points?

22 MR. GORDIN: As long as we're on the record, I
23 want to be clear that Ms. Lancaster misspoke when she said
24 that I had never been involved in a hearing before.

25 MS. LANCASTER: Oh, I'm sorry --

1 THE COURT: No, no, she said, I thought it was
2 presentation of a direct case, she said.

3 MR. GORDIN: Ah --

4 THE COURT: It's obvious you've been involved in
5 lots of trials.

6 MS. LANCASTER: I said direct case. Was I wrong
7 in that?

8 THE COURT: It was preparing a direct case. It
9 doesn't matter. I won't hold it against you.

10 MR. LYON: Your Honor, going back to the issue of
11 when witnesses are scheduled to testify, can we at least
12 have from the Bureau and ClearComm when they're going to
13 have their witnesses in town, so we have some idea,
14 therefore, when they're likely to be presented?

15 THE COURT: I don't think that's unreasonable, but
16 I don't -- I really don't think they could tell you that
17 now, can they?

18 MS. LANCASTER: Well, particularly right now, Your
19 Honor, because we called everybody up and told them
20 everything is on hold.

21 Obviously, we had hoped to have Ms. Hamilton as
22 our second witness and as was stated in the August 18
23 teleconference that we had --

24 THE COURT: She was going to be the Monday?

25 MS. LANCASTER: Right, it was going to be our

1 intention to try to follow the witness list that was
2 presented in our direct case. We were going to have to move
3 a few people around, maybe to fill in in case somebody
4 couldn't be there on a certain day and we needed to fill in.

5 At this point, I have got to find out from Ms.
6 Hamilton exactly can she come in the middle of the week?
7 That was a big problem for her.

8 THE COURT: If the problem is going to be, she'd
9 probably come the day after Labor Day and good luck trying
10 to get her back and forth at this late date the day after
11 Labor Day. That's going to cost the Bureau a lot of money.

12 MR. LYON: Your Honor, all I would ask is that --

13 THE COURT: I will direct that as soon as they
14 know what the schedules of the witnesses are, that they
15 notify you and Mr. Carroccio and if it changes, just keep
16 them -- as much as you know, you let them know, in terms of
17 firm plans.

18 MS. LANCASTER: Your Honor, we've already agreed
19 to do that and have no problem in doing that.

20 THE COURT: If there comes a point in time when
21 you think that something is being, somebody is being taken
22 out of order and you even want time to prepare, I'll give
23 you more time to prepare. That's, you know, I don't want,
24 it's not my intention to disadvantage you or to put you at
25 any kind of disadvantage. It's just that from my

1 experience, the first several days of the hearing, it's
2 going to drag unbelievably and probably the first week will
3 drag and things might pick up in the second week and in the
4 third week, people will be sick of being here and things
5 will be done very quickly.

6 MR. LYON: Do I take it, Your Honor, I should
7 cancel my vacation plans for week after next?

8 THE COURT: Yes, and then you've got to decide
9 whether you want rebuttal and there's not going to be any
10 kind of extensive break, either.

11 MR. GORDIN: For the record, I'm canceling my
12 vacation plans for this weekend.

13 THE COURT: Well, I don't have any vacation plans,
14 except I might take Friday off, so that's my vacation.

15 Let me just, anything else we need on the record?
16 Yes, sir?

17 MR. LUKAS: Your Honor, I would like to revisit
18 your ruling with respect to those three witnesses. One is
19 clearly a surprise witness, a fellow by the name of Collins.

20 THE COURT: J.B.?

21 MR. LUKAS: He apparently was on the telephone
22 with Mr. Easton for, you know, a year and a half now they
23 couldn't locate the people who spoke on the telephone with
24 Mr. Easton. I don't have a clue what he's going to say.

25 THE COURT: You may cross-examine him as if you

1 were taking discovery. When did you notify them of the
2 existence of this guy?

3 MS. LANCASTER: Mr. Collins' name was listed --
4 before we ever knew who answered the phone call, we had
5 listed everybody's name and everybody's phone number that
6 worked in that phone answering --

7 MS. POWER: Bank, in response to the
8 interrogatories.

9 MS. LANCASTER: -- bank. So, they have had his
10 name since the response to the first interrogatory.

11 THE COURT: Okay, so the argument can be made
12 that, had they wanted to find out more about him, they could
13 have called him?

14 MS. LANCASTER: They could have called.

15 MR. GORDIN: The same we tried to run this down,
16 Your Honor.

17 MS. LANCASTER: I mean, we basically, we didn't
18 find out that he had any connection, specific connection to
19 this, until we did, I did the last amendment to the
20 interrogatories.

21 THE COURT: Right.

22 MS. POWER: It was in July.

23 THE COURT: I'll give you broad leeway in
24 examining him.

25 MR. LUKAS: Your Honor, I stand corrected. Mr.

1 Lyon just reminded me that he did speak with Mr. Collins
2 just recently.

3 THE COURT: Okay.

4 MR. LUKAS: There are two other witnesses. One is
5 Mr. Sagales. I asked to speak with Mr. Sagales and was
6 refused access to him. I don't think it would be
7 unreasonable for me to ask that they prepare a short outline
8 of what major points he's expected to make.

9 THE COURT: Isn't it in the letter?

10 MS. LANCASTER: Your Honor, Mr. Sagales' phone
11 conversation with Mr. Easton --

12 MS. POWER: Is taped.

13 MS. LANCASTER: -- is taped and they have a copy
14 of the tape.

15 MS. POWER: That's all there is.

16 MS. LANCASTER: And, we put in there --

17 THE COURT: So, basically, Mr. Sagales, was he
18 going to be put on the stand?

19 MS. POWER: Yes, sir.

20 MS. LANCASTER: So that you can hear the tape and
21 you'll have a transcript and that was put in our direct
22 case, that that's what he's going to be questioned about and
23 they've got the transcript and they've got the tape.

24 THE COURT: Let's worry about that when he's on
25 the stand. I mean, what can you ask him? Wasn't the

1 transcript prepared by Mr. Breen?

2 MR. CARROCCIO: No, sir, absolutely not, Your
3 Honor.

4 THE COURT: Who prepared the transcript?

5 MR. LUKAS: I think Mr. Easton prepared one. I
6 think the Bureau --

7 MR. GORDIN: I think we prepared one.

8 THE COURT: I found one from that wasn't in there.

9 MR. CARROCCIO: Your Honor, I believe that you may
10 have -- Mr. Breen, as part of a motion for summary decision
11 back in December of '97, may have included the transcript of
12 that, but it was not a transcript prepared by or at the
13 behest of Mr. Breen.

14 THE COURT: Okay.

15 MR. LUKAS: And the third witness, Sue McNeil, I
16 tried to contact her and I can't get her to return my calls.
17 So, that is an important witness and we would like an
18 outline of her testimony.

19 MS. LANCASTER: Well, Your Honor, it's our
20 understanding -- Ms. McNeil, first of all, is not longer an
21 FCC employee. It's our understanding she's on vacation.

22 Again, you know, they've had every opportunity.
23 They've had every opportunity to try to --

24 THE COURT: Is she outlined in the letter? I
25 don't remember.

1 MR. CARROCCIO: She's listed, Your Honor.

2 THE COURT: I'll give you both leeway on her, too.
3 I mean, everybody, this goes for everybody.

4 MR. GORDIN: In that regard, I think last week we
5 received a call from a, I believe Mr. Yount, who is an
6 attorney that Mr. Easton has hired to represent some of
7 these people. Ms. Collins has had back surgery and she
8 doesn't quite know when, if she can come. That's Laura
9 Collins, and we have not pursued that because of the break.
10 I think this was shortly before we reached this break. But,
11 I just wanted to bring this to Your Honor's attention and we
12 will try to follow up on that.

13 THE COURT: She's been subpoenaed, right?

14 MS. POWER: Yes, Your Honor.

15 THE COURT: Before I'll excuse her from the
16 subpoena, I want a doctor's letter in detail, giving what
17 the heck is wrong with her and what he did to her and what
18 her condition is and when she'll be fit to travel.

19 MR. LYON: Your Honor, I have a very limited
20 amount of information secondhand that she had some type of
21 exploratory surgery. It appeared that she came through it
22 okay, but that she is not ambulatory. I have been trying to
23 get a call through to her and have not been successful.

24 MR. GORDIN: We have some alternatives, but I just
25 want to bring that to Your Honor's attention. Some

1 alternative suggestions.

2 THE COURT: Yes, okay. Anything else? Okay,
3 we'll go off the record now. Thank you.

4 (Whereupon, at 4:58 p.m., the hearing was
5 concluded.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: WT No. 97-199

CASE TITLE: Westel Samoa, Inc.

HEARING DATE: August 26, 1998

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date:

8/26/98

Elaine Kim

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I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

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